



[Billing Code: 6750-01-S]

**FEDERAL TRADE COMMISSION  
Agency Information Collection Activities;  
Proposed Collection; Comment Request**

**AGENCY:** Federal Trade Commission (“FTC” or “Commission”).

**ACTION:** Notice.

**SUMMARY:** The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC seeks public comments on its proposal to extend, for three years, the current PRA clearance for information collection requirements contained in its Use of Prenotification Negative Option Plans (“Negative Option Rule” or “Rule”). That clearance expires on November 30, 2017.

**DATES:** Comments must be submitted by [INSERT DATE 60 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

**ADDRESSES:** Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the SUPPLEMENTARY INFORMATION section below. Write “Negative Option Rule: FTC File No. P064202” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/NegOptionPRA> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the

Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be addressed to John Andrew Singer, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, CC-9528, Washington, D.C. 20580, (202) 326-3234.

**SUPPLEMENTARY INFORMATION:** Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Negative Option Rule, 16 CFR Part 425 (OMB Control Number 3084-0104).

The FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection

techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The Negative Option Rule governs the operation of prenotification subscription plans. Under these types of plans, a seller provides a consumer with automatic shipments of merchandise such as when a consumer joins as a member in a seller's book of the month club, food of the month club, or clothing items of the month club unless the consumer affirmatively notifies the seller they do not want the shipment. The Rule requires that a seller notify a member that they will automatically ship merchandise to the member and bill the member for the merchandise if the subscriber fails to expressly reject the merchandise beforehand within a prescribed time. The Rule protects consumers by: (a) requiring that promotional materials disclose the terms of membership clearly and conspicuously; and (b) establishing procedures for the administration of such "negative option" plans.

*Burden Statement:*

Estimated annual hours burden: 9,725 hours.

Based on industry input, staff estimates that approximately 75 existing clubs each require annually about 100 hours to comply with the Rule's disclosure requirements. Approximately 10 new clubs come into being each year. These figures are an increase from 2014, although industry estimates of the number of existing clubs have fluctuated significantly since the early 2000s.<sup>1</sup> Industry sources also now report to the Commission that, even at this higher figure, a substantial portion of the existing clubs would make

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<sup>1</sup> The industry estimates of existing firms subject to the Rule's disclosure requirements range from 190 (2005), 158 (2008), 45 (2011), 35 (2014) and 75 (2017). Such fluctuations have most likely derived from changes in the national economy and trends in the specific industries subject to the Rule.

these disclosures absent the Rule because they help foster long-term relationships with consumers.

Over the next three years, there will be an average 85 existing firms per year  $(75+85+95 \div 3)$ . Thus, the average annual hours burden for existing firms is expected to be 8,500. The 10 new clubs entering the market per year require approximately 125 hours to comply with the Rule, including start up-time. Thus, the cumulative PRA burden for new clubs is about 1,250 hours  $(10 \text{ clubs} \times 125 \text{ hours})$ . Combined with the estimated burden for established clubs, the total annual burden is 9,725 hours.

Estimated annual cost burden: \$473,750 (solely related to labor costs).

Based on recent data from the Bureau of Labor Statistics,<sup>2</sup> the mean hourly wage for advertising managers is approximately \$57 per hour; compensation for office and administrative support personnel is approximately \$17 per hour. Assuming that managers perform the bulk of the work, and clerical personnel perform associated tasks (*e.g.*, placing advertisements and responding to inquiries about offerings or prices), the total cost to the industry for the Rule's information collection requirements would be approximately \$473,750  $[(80 \text{ hours managerial time} \times 85 \text{ existing clubs} \times \$57 \text{ per hour}) + (20 \text{ hours clerical time} \times 85 \text{ existing clubs} \times \$17 \text{ per hour}) + (90 \text{ hours managerial time} \times 10 \text{ new clubs} \times \$57 \text{ per hour}) + (35 \text{ hours clerical time} \times 10 \text{ new clubs} \times \$17)]$ .

Because the Rule has been in effect since 1974, the vast majority of the negative option clubs have no current start-up costs. For the new clubs that enter the market each year, the costs associated with the Rule's disclosure requirements, beyond the additional labor costs discussed above, are *de minimis*. Negative option clubs already have access

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<sup>2</sup> Occupational Employment And Wages – May 2016, Table 1, at <https://www.bls.gov/news.release/ocwage.t01.htm>.

to the ordinary office equipment necessary to comply with the Rule. Similarly, the Rule imposes few, if any, printing and distribution costs. The required disclosures generally constitute only a small addition to the advertising for negative option plans. Because printing and distribution expenditures are incurred to market the product regardless of the Rule, adding the required disclosures results in marginal incremental expense.

*Request for Comment:*

You can file a comment online or on paper. [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Write “Negative Option Rule: FTC File No. P064202” on your comment. Your comment -- including your name and your state -- will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at <https://www.ftc.gov/policy/public-comments>. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/NegOptionPRA> by following the instructions on the web based form. If this Notice appears at <https://www.regulations.gov>, you also may file a comment through that Web site.

If you file your comment on paper, write “Negative Option Rule: FTC File No. P064202” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, N.W., Suite CC–5610 (Annex C), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024.

If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at [www.ftc.gov](http://www.ftc.gov), you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential" – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once

your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the Commission Website at <https://www.ftc.gov> to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <https://www.ftc.gov/site-information/privacy-policy>.

David C. Shonka  
Acting General Counsel.

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